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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

Estate of RUSSELL D.  
GREENWELL, Deceased.

B298811

(Los Angeles County  
Super. Ct. No. BP155191)

AMIE BROWN, as  
Administrator,

Petitioner and Appellant,

v.

ISAAC KYLE,

Objector and Respondent.

APPEAL from an order of the Superior Court of Los Angeles County, Barbara R. Johnson, Judge. Affirmed.

Law Offices of Duff S. McEvers and Duff S. McEvers for  
Petitioner and Appellant.

George M. Halimi for Objector and Respondent.

Amie Brown, the administrator of the Estate of Russell D. Greenwell, appeals from the probate court's order denying her motion to determine Isaac Kyle's consideration for his beneficial interest in property of the estate. Brown contends the probate court erred in concluding her motion was barred by claim preclusion based on the probate court's earlier order adjudicating Kyle's right to the property. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. *The Quitclaim Deed***

Mary F. Greenwell was the mother of Russell D. Greenwell and Sheldon Greenwell.<sup>1</sup> Mary owned a house in Sunland, California (the Property) at the time of her death in July 2010. Sheldon and Russell were heirs and beneficiaries of Mary's estate, which was administered by the Los Angeles County Public Administrator (Public Administrator).

On May 20, 2013 Russell executed a quitclaim deed transferring his "rights, title, and interest" to the Property to Kyle "in consideration of: \$50.00." The quitclaim deed was recorded on the same day. A documentary transfer tax of \$27.50 was "computed on [the] full value of property conveyed."

### **B. *Probate of Russell's Estate***

Russell died on April 30, 2014. At the time of his death, he was not married and had no children. On August 21, 2014 Brown filed a petition for probate, requesting appointment as the

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<sup>1</sup> Because the Greenwell family members share a last name, we refer to them by their first names to avoid confusion.

administrator of Russell's estate. On February 17, 2015 the probate court appointed Brown as the administrator.

C. *Sale of the Property and Distribution of the Proceeds*

On December 16, 2016 the probate court in Mary's probate case determined her estate owned the Property.<sup>2</sup> The court ordered Kyle and his wife Barbara to return possession of the Property and that the property be sold. The court ordered "[t]hat Russell Greenwell's 50% expectancy interest in [Mary's] estate be held from distribution and disbursement pending resolution of the competing claims of Amie Brown on the one hand, and Isaac Kyle and Barbara Kyle on the other, to Russell Greenwell's share of decedent's estate." On March 12, 2018 the court approved the first and final accounting for Mary's estate. The court ordered the Public Administrator to distribute \$74,676.68 from Mary's estate to Brown as the personal representative of Russell's estate.

D. *Kyle's Petition To Enforce Russell's Assignment of Interest in the Property to Kyle*

On March 14, 2018 Kyle filed a verified petition under Probate Code section 850<sup>3</sup> seeking to enforce Russell's

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<sup>2</sup> On our own motion, we take judicial notice of the December 16, 2016 and March 12, 2018 orders in Estate of Mary F. Greenwell, Deceased (Super. Ct. L.A. County, 2018, No. BP140932). (Evid. Code, §§ 452, subd. (d); 459, subd. (a).)

<sup>3</sup> Probate Code section 850, subdivision (a)(2)(C), provides that a personal representative or other interested person may file a petition for a court order "[w]here the decedent died in possession of, or holding title to, real or personal property, and the property or some interest therein is claimed to belong to

assignment of interest in the Property based on the May 20, 2013 quitclaim deed signed by Russell. Kyle requested a declaration that Russell had assigned all rights, title, and interest in Russell's estate to Kyle. Kyle further sought judgment that "any and all interest" Russell's estate received from Mary's estate would be transferred to Kyle.

On May 9, 2018 Brown filed her verified response to Kyle's petition. Brown alleged Russell "by way of a valid and irrevocable assignment of probate interest sold and/or transferred any and all rights that he previously possessed" in Mary's estate to Brown "under an agreement dated January 17, 2014," and therefore Kyle had no interest in the Property. Brown alleged the quitclaim deed "was obtained by fraudulent and deceitful means and lacked consideration." Further, Brown claimed the quitclaim deed made "absolutely no mention of any intention on the part of Russell D. Greenwell to make any 'assignment' of interest in his late mother's estate."

In his July 12, 2018 brief in support of his petition, Kyle argued Russell sold and assigned his rights, title, and interest to the Property to Kyle, and Russell "received full consideration for the sale and assignment." Kyle asserted the parties had agreed "there [were] no disputed facts pertaining to the competing claims against" Russell's estate and Kyle's claim had priority over Brown's claim. Instead, "[t]he sole issue before the court [was] the legal issue . . . whether [Kyle was] entitled to the proceeds of the sale of [the] Property when the sale and assignment of interest of [Russell] in the . . . Property were made to him by a [q]uitclaim [d]eed."

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another." Further undesignated statutory references are to the Probate Code.

In her trial brief in opposition to the petition, Brown contended the quitclaim deed at best gave Kyle an interest in real property of Mary's estate.<sup>4</sup> Once the Property was sold, the quitclaim deed did not become an assignment of interest in Russell's estate that entitled Kyle to receive Russell's share of the proceeds from the sale of the Property. Brown also claimed Kyle was "either estopped or ha[d] waived any right or claim" to Russell's estate "by virtue of his actions and conduct." Brown asserted Kyle was in possession of the Property during the administration of Mary's estate, and Kyle's conduct was consistent with his claim of ownership in the Property. Brown argued, "Nothing [Kyle] did in Mary Greenwell's Estate supports his current position that he was assigned any interest in the Estate of Russell Greenwell."

At the August 8, 2018 hearing on Kyle's petition, Brown's attorney argued the quitclaim deed did not assign Kyle an interest in Mary's estate because Kyle did not file an objection or claim in Mary's probate case asserting an interest in Mary's estate. The probate court responded that when Mary died, as an heir, Russell became an owner of the Property subject to administration of Mary's estate. Thus, Russell had the power to quitclaim to Kyle "whatever was coming to [Russell]."

In response, Brown's attorney asked the court to look at "what the intent of Russell Greenwell was at the time that he gave this quitclaim" deed. The court noted the evidence in the record contained a letter discussing how Kyle fixed up the

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<sup>4</sup> On our own motion we augment the record to include Brown's trial brief in opposition to Kyle's petition, filed on July 3, 2018 in the superior court in this case. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

property. The court explained Kyle “made it better than it should have been and all of that. And so that could be an indication that [Russell] did intend to give it to him because he fixed it up while he was living there.” Brown’s attorney responded, “I have a declaration from Russell Greenwell in Mary Greenwell’s estate that says basically that Mr. Kyle defrauded him, Mr. Kyle beat him [physically].” Kyle’s attorney replied, “[W]e came to this court with the understanding that there are no disputed facts. If they are bringing these disputed facts, I have a lot of issues. The assignment to Miss Amie Brown, the signature on that assignment by Russell is completely, completely different from his other signatures. [¶] . . . [¶] The issue before the court, Your Honor, is that Russell became the owner of half of the property from his mother. Sold it. Assigned it to Mr. Kyle. The only issue I believe that opposing attorney is raising is because the property was sold, the proceeds from the sale is different from the property itself and it has to go to the second assignee.”

The probate court inquired whether Brown’s attorney agreed Kyle’s claim had priority over Brown’s claim. Brown’s attorney answered, “No. [B]ecause it is a quitclaim deed that the intent of Mr. Russell Greenwell was to assign a right to a property that he thought he was going to get because he was duped by Mr. Kyle.” The court responded, “But . . . when we set this, that was never discussed as to his intent, as I understood it. [T]hat’s . . . what the legal issue was. [¶] Then you can do whatever you want after that. [¶] But if you are now disputing intent and all of that, then we are going to need some more time.”

Brown’s attorney reiterated Brown’s position that Kyle was estopped from asserting a claim against the Property by his failure to assert his claim in Mary’s probate case. But he added, “[I]f the court is considering opening this door regarding what the

intent of this quitclaim deed is and then Mr. Kyle helped out, I have evidence that refutes that[,] a declaration signed by [Russell] that says that's not true." At that point, the attorneys continued to argue about whether Kyle abandoned his claim to an interest in Mary's estate. The probate court then granted Kyle's petition, explaining that upon Mary's heirs (including Russell) becoming owners of the Property subject to the administration of Mary's estate, as a result of the quitclaim deed "Kyle has an interest, whatever that interest may be in Russell's estate, which is half of Mary's estate." The court stated in its December 4, 2018 order granting Kyle's petition that Russell had "assigned all his rights, title and interest from the sale" of the Property to Kyle. The court ordered any and all interest Russell's estate received from Mary's estate arising from the sale of the Property was to be transferred to Kyle. Brown did not appeal from the order.

E. *Brown's Motion To Determine Consideration for Russell's Assignment to Kyle*

On March 25, 2019 Brown filed a motion to determine consideration for Russell's assignment of beneficial interest to Kyle pursuant to sections 11604 and 11604.5.<sup>5</sup> Brown contended

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<sup>5</sup> Section 11604 provides that where a distribution is made to the transferee of a beneficiary, on a motion of the personal representative or other interested person, the court "may inquire into the circumstances surrounding the execution of, and the consideration for, the transfer, agreement, request, or instructions, and the amount of any fees, charges, or consideration paid or agreed to be paid by the beneficiary." (§ 11604, subds. (a)(1) & (b).) Section 11604.5, subdivision (d), provides conditions for certain written agreements to transfer an interest of a beneficiary to be effective.

Kyle failed to offer proof of consideration for the assignment of interest he received from Russell.

In opposition, Kyle argued Brown's motion was a motion for reconsideration of the probate court's December 4, 2018 order. Kyle asserted Brown was barred from relitigating Kyle's interest in Russell's estate based on principles of collateral estoppel and res judicata. Kyle noted he had addressed section 11604.5 in his July 12, 2018 brief in support of his petition, in which he had argued the section did not apply to Russell's transfer to Kyle because section 11604.5, subdivision (b)(2), limited application of the section to a transferee who "regularly engages in the purchase of beneficial interests in estates for consideration." Finally, Kyle argued the quitclaim deed showed payment of \$27.50 for the transfer tax, which meant the consideration was \$25,000.<sup>6</sup>

In reply, Brown argued the parties had not previously reached an agreement regarding the competing claims of Russell's assignment of rights, and Kyle had not presented evidence he paid valuable consideration for the Property. Rather, "[t]he question was whether a quitclaim deed . . . was an assignment of a beneficial interest in this estate, as a matter of law. There is no record supplied by Mr. Kyle relating to consideration for the Assignment in any previous hearing because it doesn't exist."

At the April 30, 2019 hearing, Brown argued the issue of consideration was never addressed on Kyle's petition because the issue in that trial was whether the document from Russell purporting to transfer the Property to Kyle was properly a

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<sup>6</sup> Kyle did not provide the formula for calculation of the transfer tax from the property value.



quitclaim deed or an assignment of Russell's beneficial interest in Mary's estate. Thus, the question of consideration could not be resolved until that determination was made. The probate court rejected this argument, explaining the court had decided the issue of consideration because it "expressly found that [Russell] assigned all his rights, title and interest in the sale of the Property to [Kyle] and that any and all interests of the estate of [Russell] received from the estate of Mary Greenwell from the sale of the Property located at that address be transferred to [Kyle]." In its minute order denying Brown's motion, the court ruled, "[Brown] is barred by the doctrine of res judicata from relitigating . . . Kyle's interest in the [Property]." On September 4, 2019 the court entered an order denying Brown's motion to determine consideration for Kyle's beneficial interest.

Brown appealed from the September 4, 2019 order.

## **DISCUSSION**

On appeal, Brown contends the probate court erred in finding claim preclusion barred Brown's motion to determine consideration. She argues the court did not decide in its ruling on Kyle's section 850 petition whether consideration was given for the quitclaim deed, instead reserving that for a future trial. Kyle responds that Brown raised whether Russell intended to transfer his rights in the Property to Kyle, and the court adjudicated this issue in its order finding Russell had assigned all his rights in the Property to Kyle. Further, Kyle asserted the motion to determine consideration was a motion for reconsideration of the December 4, 2018 order that was not

separately appealable.<sup>7</sup> We agree with Kyle that claim preclusion barred Brown’s motion for determination of consideration.<sup>8</sup>

“Claim preclusion prevents relitigation of entire causes of action. [Citations.] Claim preclusion applies only when ‘a second suit involves (1) the same cause of action (2) between the same parties [or their privies] (3) after a final judgment on the merits in the first suit.’” (*Samara v. Matar* (2018) 5 Cal.5th 322, 326-327; accord, *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 91.) Under claim preclusion, “if a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause

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<sup>7</sup> Kyle filed a motion to dismiss the appeal on the ground the probate court’s September 4, 2019 order on Brown’s motion to determine consideration was a motion for reconsideration of the court’s December 4, 2018 order on Kyle’s petition. On October 29, 2019 we denied Kyle’s motion to dismiss, explaining, “The court is tentatively of the view that the order at issue is appealable. . . . However, the issue of jurisdiction may be considered by the panel hearing the merits of the appeal.” In his brief Kyle renews his argument Brown’s motion was in effect a motion for reconsideration, which is not separately appealable. We find the trial court’s analysis of Brown’s motion more persuasive in finding Brown’s motion was barred by claim preclusion as a result of the court’s adjudication of Kyle’s petition and finding that Russell had transferred all his rights in the Property to Kyle.

<sup>8</sup> The Supreme Court has suggested courts “use the terms ‘claim preclusion’ to describe the primary aspect of the res judicata doctrine and ‘issue preclusion’ to encompass the notion of collateral estoppel.” (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.)

of action.” (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896-897 (*Mycogen Corp.*); accord, *SLPR, L.L.C. v. San Diego Unified Port Dist.* (2020) 49 Cal.App.5th 284, 297-298.)

“To determine whether two proceedings involve identical causes of action for purposes of claim preclusion, California courts have ‘consistently applied the “primary rights” theory.’” (*Boeken v. Phillip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797 (*Boeken*); accord, *Mycogen Corp.*, *supra*, 28 Cal.4th at p. 904.) “[T]he primary right is simply the plaintiff’s right to be free from the particular injury suffered.” (*Mycogen Corp.*, at p. 904; accord, *Boeken*, at p. 798.) “[T]he “cause of action” is based upon the harm suffered, as opposed to the particular theory asserted by the litigant. [Citation.] Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief.” (*Boeken*, at p. 798; accord, *Hayes v. County of San Diego* (2013) 57 Cal.4th 622, 631.) “When two actions involving the same parties seek compensation for the same harm, they generally involve the same primary right.” (*Boeken*, at p. 798; accord, *Agarwal v. Johnson* (1979) 25 Cal.3d 932, 954, disapproved on another ground in *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 574, fn. 4.)

“If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable.” (*Sutphin v. Speik* (1940) 15 Cal.2d 195, 202 (*Sutphin*); accord, *State Comp. Ins. Fund v. ReadyLink*

*Healthcare, Inc.* (2020) 50 Cal.App.5th 422, 447 (*State Comp. Ins. Fund*); *Samara v. Matar* (2017) 8 Cal.App.5th 796, 803, review granted May 17, 2017, S240918 [“The bar applies if the cause of action could have been brought, whether or not it was actually asserted or decided in the first lawsuit.”].)

“This principle also operates to demand of a defendant that all of its defenses to the cause of action urged by the plaintiff be asserted under the penalty of forever losing the right to thereafter so urge them.” (*Sutphin, supra*, 15 Cal.2d at p. 202; accord, *Warga v. Cooper* (1996) 44 Cal.App.4th 371, 378 [claim preclusion barred husband from litigating his concealment defense because he could have raised the defense in the prior proceeding].)

Claim preclusion applies to final orders in proceedings under the Probate Code. (*Estate of Redfield* (2011) 193 Cal.App.4th 1526, 1531, 1534 [applying claim preclusion to resolve issues barred by probate court’s dismissal of prior section 850 petitions with prejudice]; see Code Civ. Proc., § 1908, subd. (a)(1) [a judgment or order “against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, . . . is conclusive upon the title to the thing, the will, or administration . . . .”]; *In re Conservatorship of Harvey* (1970) 3 Cal.3d 646, 651-652 [res judicata applied to bar later challenge to final Probate Code order authorizing conservator to employ attorney and pay travel expenses to locate possible heirs].) “The question of the applicability of claim preclusion or issue preclusion is one of law to which we apply a de novo review.” (*Samara v. Matar, supra*, 8 Cal.App.5th at p. 803; accord, *In re Marriage of Marshall* (2018) 23 Cal.App.5th 477, 485.)

All three elements of claim preclusion are met here. It is undisputed Brown was a party to the proceeding adjudicating

Kyle's section 850 petition. Further, the December 4, 2018 order adjudicating Kyle's petition was an appealable order under section 1300. (§ 1300, subd. (k) [an appeal may be taken from an order "[a]djudicating the merits of a claim made under Part 19 (commencing with Section 850) of Division 2"]; *Estate of Redfield, supra*, 193 Cal.App.4th at p. 1534 ["Orders of the probate court adjudicating the merits of a section 850 claim and authorizing a compromise of a contest are appealable."].) Because Brown did not appeal the order, it became final. (*Estate of Redfield*, at pp. 1534-1535 [probate court's order dismissing the section 850 petitions with prejudice "became final and unassailable" because "[n]o appeal was taken from the . . . order within the time period allowed (Cal. Rules of Court, rule 8.104(a))"].)

Finally, Brown's motion to determine consideration involved the same assignment adjudicated by the probate court on Kyle's section 850 petition. In his petition, Kyle sought a declaration that Russell had assigned all rights, title, and interest in Russell's estate to Kyle by signing the quitclaim deed. Kyle argued in his supporting brief that Russell "received full consideration for the sale and assignment." In her verified response, Brown alleged the quitclaim deed "lacked consideration," but she did not raise this contention in her trial brief or at the hearing on Kyle's petition. Brown's attorney noted at the hearing he had a declaration from Russell saying Kyle defrauded him, but when the court responded that it would need more time than it had set aside for the hearing to address any dispute as to intent, Brown never requested a continuance of the hearing, instead focusing on whether Kyle's failure to assert a claim in Mary's probate case barred him from receiving an interest in the Property. Brown sought in her motion to set aside

the precise assignment the probate court adjudicated in ruling on Kyle's petition.

Because Brown could have raised at trial the absence of consideration as a defense to Kyle's petition to adjudicate his interest in the Property, the December 4, 2018 order was a final order on the merits of the assignment that barred Brown's later motion on the same subject. (*Sutphin, supra*, 15 Cal.2d at p. 202; *State Comp. Ins. Fund, supra*, 50 Cal.App.5th at p. 447; *Warga v. Cooper, supra*, 44 Cal.App.4th at p. 378.)

### **DISPOSITION**

The September 4, 2019 order is affirmed. Kyle is entitled to recover his costs on appeal from Brown.

FEUER, J.

We concur:

PERLUSS, P. J.

SEGAL, J.